SB CIVIL MISC. APPEAL NO. 1912/2006
(RAJENDRA KR. AGRAWAL v MANMOHAN AGRAWAL & ORS)

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HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 21.8.2006

Mr. Rajendra Soni for the appellant.
Mr. R.P. Garg for the respondents.

The appellant has challenged the order dated 2.6.06 passed by the Addl. District Judge No.4, Jaipur City, Jaipur whereby the application under Order 39 Rule 1 and 2 C.P.C. read with Section 151 C.P.C. has been rejected.

Although there had been number of litigations between the appellant and the respondent No.1, the controversy before this Court is a narrow one. According to the appellant there are two plots namely, Plot No. D-178 and D-179, which were purchased by one Dr. T.C. Gangwal way back in the year 1943. The appellant's grandfather, Shri Kapoor Chand Agarwal, bought the said plots from Dr. T.C. Gangwal in 1946. After the demise of Shri Kapoor Chand Agrawal, apparently both the plots devolved to his only son, namely, Nathulal Ji , the father of the appellant and of the respondent No.1.

On 1.7.63 a family settlement was reached whereby part of plot No. D-178 was given to respondent No.1, Manmohan Agrawal. The rest of the plot including plot No. D-179 fell into the share of the appellant. Between 1973 to 1976 apparently certain differences arose between the two brothers over the said property. The appellant was under an apprehension that his brother, the respondent No.1, would raise certain constructions which would adversely affect his rights. Therefore, he filed a civil suit in the Court of Civil Judge 9Jr. Div.) on 16.10.96. On 17.10.96 an interim order of status-quo was granted in favour of the appellant. However, after receiving the Commissioner's report and after considering the fact that part of plot No. D-178 was under the ownership of respondent No.1, the learned Court dismissed the interim injunction. Therefore, the appellant filed a Civil Miscellaneous Appeal before the Court of District Judge, Jaipur City, Jaipur. The said Civil Miscellaneous Appeal was dismissed vide order dated 5.11.98 and a revision was filed before this Court. However, the said revision was dismissed on the ground that the civil suit was dismissed in default on 28.10.90. But, subsequently, the civil suit was restored on 8.3.2001.  Taking benefit of the dismissal of the civil suit and prior to its restoration, respondent No. 1 raised a wall between

the two plots. Allegedly, the said wall is too close to the appellant's house and while raising the said wall, the sewerage line and telephone line of the appellant was disturbed, therefore, the appellant filed the present civil suit. However, subsequently the suit was withdrawn with permission to file a fresh suit. On 30.1.2001 a fresh suit was filed with temporary injunction application befoe the District Judge. Vide order dated 6.11.2001, the temporary injunction was granted and status quo was directed to be maintained by both the parties. Subsequently, on 15.12.03, the respondent No.1 sold the said plot to Shri Shanker Lal and Smt. Manju Agrawal, the respondent no.2 and 3 before us. Thereafter on 9.6.2004, the said property was sold by Shri Shanker Lal to Shri Kuber Khandaka and Smt. Alka Khandaka, the respondent Nos. 4 and 5 before this Court. Vide order dated 2.6.06, the application for temporary injunction has been dismissed as aforementioned. Hence, this appeal before this Court.

Mr. Rajendra Soni, the learned counsel for the appellant, has argued that according to the Commissioner's report dated 17.10.96, no wall existed at the site. Therefore, the said wall has been constructed only after 1996. According to him, the said wall was

constructed in the year 2001 by respondent No.1. Because of the construction of the said wall, the access to his garage, which is situated in the back of plot No. D-178 has been denied to him. According to the map shown by the appellant, between plot No. D-179 and as part of D-178 a common passage way existed. The appellant had access to his garage only through this common passage way. However, after the construction of the wall, the appellant is not having the access to the common passage way. Thus, he no longer has access to his garage which is situated in the back of plot No. D-178. He has further contended that the construction of the wall is causing nuisance as the said wall is too close to the windows of his house. Lastly, he has contended that because of the construction of the said wall the sewerage line and the telephone line of his house have been disturbed.

On the other hand, Mr. R.P. Garg, the learned counsel for the respondents, has vehemently argued that while dismissing the temporary injunction application vide order dated 25.7.97, the learned Court had given a finding that respondent No.1 is the owner of plot No. D-178, therefore, the respondent and the subsequent buyers have the right to raise the said wall on their plot.

We have heard both the learned counsels and have perused the impugned order.

The function of the judiciary as social engineers, is to ensure that disputes between individuals is settled in a peaceful and amicable way. Since the is dispute about the common passage way, since their dispute is likely to take an ugly turn, the learned trial court ought to have issued an order directing both the parties to maintain status-quo. However, in the present case, the learned Judge has failed to do so. It is also the duty of every citizen to maintain peace and harmony with his neighbor. Therefore, both the parties ought to maintain status-quo over the disputed passage way.

Therefore, both the parties are directed to main the status-quo on the disputed property. The respondent shall have no right to raise any construction on 10 feet from the wall towards the house of the respondent during the pendency of the trial. However, it is clarified that the respondent may raise construction on the building occupied by him for the purpose of maintenance of the said building in accordance with law. The learned trial court is directed to complete the trial within a period of six months from the date of receipt of a

certified copy of this order.

With these observations, these appeals are allowed.

( R.S. CHAUHAN ) J.

MRG.